

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

JESUS TINA, et al.,

Plaintiff,

vs.

HOME CAPITAL FUNDING, et al.,

Defendant.

CASE NO. 08 CV 1167 JM (NLS)

**ORDER SUA SPONTE  
DISMISSING CASE FOR LACK  
OF SUBJECT MATTER  
JURISDICTION**

Plaintiffs initiated this action on July 1, 2008. They concurrently filed a verified complaint and an ex parte application for a temporary restraining order (“TRO”) and preliminary injunction. Defendants are several mortgage lenders and financial institutions, and two individuals who previously owned Plaintiffs’ home. Defendants have yet to appear in this action. In the complaint, Plaintiffs allege two state-law causes of action: (1) fraud, and (2) deceptive and unfair trade practices, in violation of California Business and Professions Code § 17200.

Plaintiffs’ claims for injunctive relief essentially seek to enjoin Defendants, one of whom may hold Plaintiffs’ two mortgages, from foreclosing on Plaintiffs’ home. The remainder of the claims relate generally to Defendants’ alleged involvement in falsely representing to Plaintiffs that a bedroom in Plaintiffs’ house had been constructed without proper building permits, preventing Plaintiffs from renting or lease the unlawful additions to Plaintiffs’ property, causing Plaintiffs’ mortgage payments to go into arrears, stating an incorrect amount due and owing, engaging in a willfully oppressive sale, collecting improper closing and other fees, making incorrect tax and escrow impounds, misapplying

1 Plaintiffs' payments, and other violations occurring at the closing of the sale on September 16, 2005.

2 Federal courts are courts of limited jurisdiction. "Without jurisdiction the court cannot  
3 proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the  
4 only function remaining to the court is that of announcing the fact and dismissing the cause." Steel  
5 Co. v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998) (quoting Ex parte McCardle, 74 U.S.  
6 (7 Wall.) 506, 514, 19 L.Ed. 264 (1868)). Accordingly, federal courts are under a continuing duty to  
7 confirm their jurisdictional power and are even "obliged to inquire sua sponte whenever a doubt arises  
8 as to [its] existence. . . ." Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 278 (1977)  
9 (citations omitted).

10 "The district courts shall have original jurisdiction of all civil actions arising under the  
11 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Longstanding Supreme Court  
12 precedent provides that "the question whether a claim 'arises under' federal law must be determined  
13 by reference to the 'well-pleaded complaint.'" Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478  
14 U.S. 804, 808 (1986) (quoting Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 9-  
15 10 (1983)). Under this rule, the existence of a federal question must appear on the face of a plaintiff's  
16 well-pleaded complaint. See Louisville & Nashville R.R. Co. v. Mottley, 211 U.S. 149, 152 (1908).  
17 A case "arises under" federal law within the meaning of 28 U.S.C. § 1331 when federal law either (1)  
18 creates the cause of action or (2) the plaintiff's right to relief necessarily depends on resolution of a  
19 substantial question of federal law. See Franchise Tax Bd. v., 463 U.S. at 27-28.

20 Applying the well-pleaded complaint rule in this case, Plaintiffs' claims neither arise under  
21 federal law nor require the resolution of substantial federal issues. On the civil cover sheet, Plaintiffs  
22 state that this court has jurisdiction due to the existence of a federal question. Specifically, they  
23 describe their cause of action as "Fraud TILA" and state that they are filing under 15 U.S.C. § 1601,  
24 et seq. – the Truth in Lending Act. Nevertheless, the complaint explicitly contains only state-law  
25 causes of action. Neither the complaint nor the application for injunctive relief refers to the Truth in  
26 Lending Act or to any other federal statute.<sup>1</sup> Although violations of federal statutes such as the Truth

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28 <sup>1</sup>The court's conclusion that the claims do not arise under federal law is bolstered by the fact that, in the caption of each document filed by Plaintiffs, the words "In the Superior Court of the State of California County of San Diego" have been interlineated by hand and replaced with "United States

1 in Lending Act can form the predicate for a § 17200 claim, see Jones v. E\*Trade Mortgage Corp., 397  
2 F.3d 810, 813 (9th Cir. 2005), the state law claims here do “not depend necessarily upon a question  
3 of federal law,” Merrell Dow Pharmaceuticals, Inc., 478 U.S. at 807, because a jury could find  
4 Defendants liable for fraud or violation of § 17200 based upon the misrepresentations and fraudulent  
5 conduct alleged in the complaint.

6 Accordingly, the court sua sponte dismisses this action for lack of federal subject matter  
7 jurisdiction. The Clerk of Court is instructed to close the file.

8 **IT IS SO ORDERED.**

9 DATED: July 2, 2008

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11 Hon. Jeffrey T. Miller  
United States District Judge

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27 District Court Southern District of San Diego.” Furthermore, in the application for a TRO and  
28 preliminary injunction, Plaintiffs state, “This application is made pursuant to California Code of Civil  
Procedure 526.” (App. for TRO at 2 ¶ 3.) Thus, the documents suggest that Plaintiffs originally filed  
or intended to file this action in state court, and that Plaintiffs neglected to revise their complaint to  
add a federal cause of action before filing in federal court.